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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION

20 NATIONAL INTERSTATE INSURANCE
COMPANY

Plaintiff.

Defendant

Case No. 2:22-CV-02127-TLN-KJN

STIPULATED PROTECTIVE ORDER

Trial Date:

27 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, Plaintiff NATIONAL
28 INTERSTATE INSURANCE COMPANY (“National Interstate”) in case no. 2:22-CV-02127-KJN

1 and Defendant ACCEPTANCE CAUSALITY INSURANCE COMPANY (“ACIC”) in case no.
2 2:22-CV-02127-KJN (National Interstate and ACIC are collectively referred to as the “PARTIES”),
3 through their undersigned counsel, jointly submit this Stipulated Protective Order (“PROTECTIVE
4 ORDER”) to govern the handling of information and materials produced in the course of discovery
5 or filed with the Court in advance of trial in this ACTION.

6 **I. PURPOSES AND LIMITATIONS**

7 DISCLOSURE and discovery activity in this ACTION are likely to involve production of
8 confidential, privileged, proprietary, or private information for which special protection from public
9 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
10 Accordingly, the PARTIES to this ACTION hereby stipulate to and petition the Court to enter the
11 following PROTECTIVE ORDER.

12 The PARTIES acknowledge that this PROTECTIVE ORDER does not confer blanket
13 protections on all disclosures or responses to discovery and that the protection it affords from public
14 disclosure and use extends only to the limited information or items that are entitled to confidential
15 treatment under established legal principles. The PARTIES further acknowledge, as set forth in
16 Section 12.3, below, that this PROTECTIVE ORDER does not automatically entitle them to file
17 confidential information under seal; rather Eastern District Local Rule 141 sets forth the procedures
18 that must be followed and the standards that will be applied when a PARTY seeks permission from
19 the Court to file material under seal.

20 Nothing in this PROTECTIVE ORDER shall be deemed an admission by any PARTY that
21 certain categories or types of DOCUMENTS or information contain proprietary or confidential
22 information. Each PARTY retains the right to challenge any and all information designated
23 “CONFIDENTIAL,” as defined in Paragraph 3.3 below, through the procedures detailed in this
24 PROTECTIVE ORDER. Nothing in this PROTECTIVE ORDER shall be deemed a waiver of any
25 such rights.

26 THEREFORE, IT IS HEREBY STIPULATED, AGREED, AND JOINTLY REQUESTED
27 by and between the PARTIES, by and through their respective counsel of record, that this COURT
28 enter this PROTECTIVE ORDER to govern the proceedings in this ACTION for good cause shown

1 and according to the following terms and provisions.

2 **II. GOOD CAUSE STATEMENT PURSUANT TO L.R. 141.1(C)**

3 This Action is a coverage dispute between insurance carriers relating to their respective
4 obligations with respect to the settlement of certain underlying litigation on behalf of the parties'
5 mutual insureds. A resolution of the Parties' claims and defenses in this action will require
6 consideration of, among other factors, whether the settlement of the UNDERLYING LITIGATION
7 was "reasonable", and whether the insured and the Parties complied with and fulfilled their
8 respective obligations in connection with the policies of insurance issued by National Interstate and
9 ACIC and their duties of good faith and fair dealing. Furthermore, at least some federal courts
10 applying California law have concluded that the "common interest" doctrine does not apply to the
11 exchange of information with a non-defending insurer notwithstanding any obligation of
12 cooperation imposed in a policy of insurance, such that the disclosure of such otherwise privileged
13 communications between the insureds and/or counsel retained to represent the insureds and a
14 defending insurer, on the one hand, and a non-defending insurer, on the other, may operate as a
15 waiver of those privileges with respect to such communications and documents. *See, e.g.,*
16 *Continental Cas. Co. v. St. Paul Surplus Lines Ins. Co.*, 265 F.R.D. 510, 526-530 (E.D.Cal. 2010).
17 Accordingly, this action is likely to involve such CONFIDENTIAL and privileged materials, for
18 which special protection from public disclosure and from use for any purpose other than prosecution
19 and defense of this ACTION is warranted.

20 Such CONFIDENTIAL and proprietary materials and information may consist of, among
21 other things, documents and testimony which National Interstate believes are subject to the attorney-
22 client privilege and/or work product doctrines, including the correspondence and testimony of
23 attorneys retained by National Interstate to defend the insured and to negotiate a settlement of the
24 underlying action concerning their views and analysis of: (1) the insureds' potential liability for the
25 claims asserted against them in the underlying litigation; (2) the underlying plaintiffs injuries and
26 damages and the insureds' potential exposure thereto; (3) the reasonableness of the settlement
27 ultimately negotiated in the underlying litigation in light of facts such as the insureds' potential
28 liability and exposure to the underlying plaintiffs' claims for damages, (including information

1 implicating privacy rights of third PARTIES); information otherwise generally unavailable to the
2 public; and information that may be otherwise protected from DISCLOSURE under state or federal
3 statutes, court rules, case decisions, or common law.

4 ACIC anticipates it may be asked to produce CONFIDENTIAL and proprietary materials
5 and information relating to its business practices and the subject excess insurance policy. ACIC
6 further expects it may be asked to produce CONFIDENTIAL documents and/or communications
7 relating to its evaluation of whether coverage obligations have arisen under the subject ACIC excess
8 policy with respect to the defense and settlement of the underlying action. ACIC may also be asked
9 to produce CONFIDENTIAL documents and/or communications containing information otherwise
10 generally unavailable to the public; and information that may be otherwise protected from
11 DISCLOSURE under state or federal statutes, court rules, case decisions, or common law.

12 Accordingly, to expedite the flow of information, to facilitate the prompt resolution of
13 disputes over confidentiality of discovery materials, to adequately protect information the PARTIES
14 are entitled to keep CONFIDENTIAL, to ensure that the PARTIES are permitted reasonably
15 necessary use of such material in preparation for and in the conduct of proceedings in this ACTION,
16 to address their handling at the end of the litigation, and to serve the ends of justice, a protective
17 order for such information is justified in this matter. It is the intent of the PARTIES that information
18 will not be designated as CONFIDENTIAL for tactical reasons and that nothing be so designated
19 without a good-faith belief that it has been maintained in a CONFIDENTIAL, nonpublic manner,
20 and there is good cause why it should not be part of the public record of this case.

21 **Statement Under L.R. 141.1(c)(1):** Examples of CONFIDENTIAL information that the
22 PARTIES may seek to protect from unrestricted or unprotected DISCLOSURE include:

- 23 a) Information that is the subject of a non-disclosure or confidentiality agreement or
24 obligation or subject to the mediation or settlement privileges;
- 25 b) Agreements with third-parties, including liability coverage agreements, reservation
26 of rights letters, underwriting information, insurance contracts and financial
27 information (such as premium, rating information, and rating basis (e.g. gross sales),
28 which may be set forth in insurance contracts);

- 1 c) Any documents, communications, correspondence, or testimony reflecting the work
2 product, and/or mental impressions of counsel which are or would be subject to the
3 attorney-client privilege and/or the work product doctrine, prepared in connection
4 with the evaluation, defense or settlement of the litigation entitled *Karina Rios and*
5 *Christy Kelsoe v. Mark Szyrynski, et al.*, Sacramento County Superior Court, Case
6 No. 34-2020-00277511;
- 7 d) Any documents, materials and testimony marked confidential in the underlying
8 litigation entitled *Karina Rios and Christy Kelsoe v. Mark Szyrynski, et al.*,
9 Sacramento County Superior Court, Case No. 34-2020-00277511;
- 10 f) The PARTIES' trade secrets, business and financial information.

11 **Statement Under L.R. 141.1(c)(2):** Generally speaking, information and DOCUMENTS
12 shall only be designated under this PROTECTIVE ORDER because the DESIGNATING PARTY
13 believes the information or DOCUMENTS are proprietary and/or CONFIDENTIAL that the
14 DESIGNATING PARTY would not release publicly. Unrestricted or unprotected disclosure of
15 such CONFIDENTIAL or commercial information would result in prejudice or harm to the
16 PRODUCING PARTY by revealing the PRODUCING PARTY's confidential and privileged
17 communications, , and personal and confidential information of third parties. Additionally, privacy
18 interests of Third Parties, such as financial information and other confidential business information
19 must be safeguarded. Accordingly, the PARTIES respectfully submit that there is good cause for
20 the entry of this PROTECTIVE ORDER.

21 **Statement Under L.R. 141.1(c)(3):** The PARTIES submit that protecting the
22 CONFIDENTIAL nature of information in this way will be most efficient for the PARTIES and the
23 COURT. The PARTIES have met and conferred on this issue and agree that any private agreement
24 between the PARTIES to safeguard this information will need to be replicated through orders of this
25 COURT at the time of filing dispositive or non-dispositive motions. The burden shall be on the
26 PARTY that designated information "CONFIDENTIAL" to take all steps necessary to protect that
27 information in information filed with the Court. However, the PARTIES also agree that if a PARTY
28 seeks to file information previously designated as CONFIDENTIAL under seal and the Court does

1 not deem the information to be worthy of such protection, the PARTY may proceed with its filing
2 containing otherwise CONFIDENTIAL DOCUMENTS and information without an Order sealing
3 the record so long as (a) the PARTY has made a good faith effort to obtain an Order sealing the
4 record; and (b) the PARTY takes no further steps to draw public attention to the Court filing of
5 information formerly designated as CONFIDENTIAL.

6 **III. DEFINITIONS**

7 In this PROTECTIVE ORDER, the words set forth below shall have the following
8 meanings:

9 3.1. “ACTION” or “PROCEEDING” means the above-entitled proceeding 2:22-
10 CV-02127-KJN.

11 3.2. “CHALLENGING PARTY” shall mean a PARTY or NON-PARTY that
12 challenges the designation of information or items under this PROTECTIVE ORDER.

13 3.3. “CONFIDENTIAL” Information or Items means DOCUMENTS, materials,
14 depositions or other TESTIMONY, deposition exhibits, interrogatory responses, responses to
15 requests for admission, and other information produced by the PARTIES or third parties in
16 connection with this case that a PARTY believes in good faith contains or comprises any
17 proprietary, confidential, or sensitive information that is related to research and development or is a
18 trade secret or is of a commercial, technical, financial, or personal nature or qualifies for protection
19 under Federal Rule of Civil Procedure 26(c)(1)(A-H).

20 3.4. “COUNSEL” shall mean OUTSIDE COUNSEL OF RECORD and IN-
21 HOUSE COUNSEL (each as defined herein), as well as their respective support staff.

22 3.5. “COURT” shall mean the United States District Court, Eastern District of
23 California, Fresno Division.

24 3.6. “DESIGNATING PARTY” means the PARTY that designates Materials as
25 “CONFIDENTIAL.”

26 3.7. “DISCLOSE” or “DISCLOSED” or “DISCLOSURE” means to reveal,
27 divulge, give, or make available Materials, or any part thereof, or any information contained therein.

28 3.8. “DISCLOSURE OF DISCOVERY MATERIAL” means all items or

1 information, regardless of the medium or manner in which it is generated, stored, or maintained
2 (including, among other things, TESTIMONY, transcripts, and tangible things), that are produced
3 or generated in disclosures or responses to discovery in this matter.

4 3.9. “DOCUMENTS” shall have the same meaning as the terms “documents and
5 electronically stored information” as used in Rule 34 of the Federal Rules of Civil Procedure and
6 include any “writing,” “recording,” “photograph,” “original,” or “duplicate,” as those terms are
7 defined by Federal Rule of Evidence 1001.

8 3.10. “EXPERT” shall mean a person with specialized knowledge or experience in
9 a matter pertinent to the litigation who has been retained by a PARTY or its COUNSEL to serve as
10 an expert witness or as a consultant in this ACTION.

11 3.11. “INFORMATION” means the content of DOCUMENTS or TESTIMONY.

12 3.12. “IN-HOUSE COUNSEL” means attorneys who are employees of a PARTY
13 to this ACTION. IN-HOUSE COUNSEL does not include OUTSIDE COUNSEL OF RECORD or
14 any other outside counsel.

15 3.13. “NON-PARTY” or “NON-PARTIES” means any natural person,
16 partnership, corporation, association, or other legal entity not named as a PARTY to this ACTION
17 who/that agrees to be bound by this PROTECTIVE ORDER by signing the “Acknowledgement and
18 Agreement to Be Bound” that is attached to this PROTECTIVE ORDER as Exhibit A.

19 3.14. “OUTSIDE COUNSEL OF RECORD” means attorneys who are not
20 employees of a PARTY to this ACTION but are retained to represent or advise a PARTY to this
21 ACTION and have appeared in this ACTION on behalf of that PARTY or are affiliated with a law
22 firm which has appeared on behalf of that PARTY.

23 3.15. “PARTIES” shall mean Plaintiff NIIC and Defendant ACIC.

24 3.16. “PARTY” shall mean one of the aforementioned two PARTIES.

25 3.17. “PRODUCING PARTY” shall mean a PARTY or NON-PARTY that
26 produces INFORMATION or other discovery material in this ACTION.

27 3.18. “PROFESSIONAL VENDORS” means persons or entities that provide
28 litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or

1 demonstrations, and organizing, storing, or retrieving data in any form or medium) and their
2 employees and subcontractors.

3 3.19. “PROTECTED MATERIAL” means any DISCLOSURE OF DISCOVERY
4 MATERIAL that is designated as “CONFIDENTIAL” that has not had that designation removed
5 according to the terms of this PROTECTIVE ORDER.

6 3.20. “PROTECTIVE ORDER” means this Stipulated Protective Order entered in
7 the ACTION.

8 3.21. “RECEIVING PARTY” means a PARTY that receives DISCLOSURE OF
9 DISCOVERY MATERIAL from a PRODUCING PARTY.

10 3.22. “TESTIMONY” means all depositions, declarations or other testimony taken
11 or used in this PROCEEDING.

12 3.23 “UNDERLYING ACTION” shall mean the litigation entitled *Karina Rios*
13 and *Christy Kelsoe v. Mark Szyrynski, et al.*, Sacramento County Superior Court, Case No. 34-2020-
14 00277511.

15 **IV. SCOPE AND DURATION**

16 **4.1 Scope.** The protections conferred by this Stipulation and PROTECTIVE ORDER
17 cover not only PROTECTED MATERIAL (as defined above), but also (1) any INFORMATION
18 copied or extracted from PROTECTED MATERIAL; (2) all copies, excerpts, summaries, or
19 compilations of PROTECTED MATERIAL; and (3) any TESTIMONY, conversations, or
20 presentations by PARTIES or their COUNSEL that might reveal PROTECTED MATERIAL.
21 However, the protections conferred by this PROTECTIVE ORDER do not cover the following
22 INFORMATION: (a) any INFORMATION that is in the public domain at the time of
23 DISCLOSURE to a RECEIVING PARTY or becomes part of the public domain after its
24 DISCLOSURE to a RECEIVING PARTY as a result of publication not involving a violation of this
25 PROTECTIVE ORDER, including becoming part of the public record through trial or otherwise;
26 and (b) any INFORMATION known to the RECEIVING PARTY prior to the DISCLOSURE or
27 obtained by the RECEIVING PARTY after the DISCLOSURE from a source who obtained the
28 INFORMATION lawfully and under no obligation of confidentiality to the DESIGNATING

1 PARTY. Any use of PROTECTED MATERIAL at trial shall be governed by a separate agreement
2 or order.

3 **4.2 Duration.** Even after final disposition of this litigation, the confidentiality
4 obligations imposed by this PROTECTIVE ORDER shall remain in effect until a DESIGNATING
5 PARTY agrees otherwise in writing or a court order otherwise directs. Final disposition shall be
6 deemed to be upon (1) dismissal of all claims and defenses in this ACTION, with or without
7 prejudice; or (2) final judgment herein after the completion and exhaustion of all appeals, rehearings,
8 remands, trials, or reviews of this ACTION, including the time limits for filing any motions or
9 applications for extension of time pursuant to applicable law.

10 **V. DESIGNATING PROTECTED MATERIAL**

11 **5.1 Manner and Timing of Designations.** Except as otherwise provided in this
12 PROTECTIVE ORDER or as otherwise stipulated or ordered, DISCLOSURE OF DISCOVERY
13 MATERIAL that qualifies for protection under this PROTECTIVE ORDER must be clearly so
14 designated before the material is DISCLOSED or produced.

15 Designation in conformity with this PROTECTIVE ORDER requires:

16 (a) for DOCUMENTS (e.g., paper or electronic DOCUMENTS, but excluding
17 transcripts of depositions or other pretrial or trial proceedings), that the PRODUCING PARTY affix
18 the legend “CONFIDENTIAL” to each page that contains PROTECTED MATERIAL. If only a
19 portion or portions of the material on a page qualifies for protection, the PRODUCING PARTY
20 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
21 margins). A PARTY or NON-PARTY that makes original materials available for inspection need
22 not designate them for protection until after the inspecting PARTY has indicated which material it
23 would like copied and produced. During the inspection and before the designation, all of the material
24 made available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting PARTY
25 has identified the materials it wants copied and produced, the PRODUCING PARTY must
26 determine which materials, or portions thereof, qualify for protection under this PROTECTIVE
27 ORDER. Then, before producing the specified materials, the PRODUCING PARTY must affix the
28 “CONFIDENTIAL” legend to each page that contains PROTECTED MATERIAL. If only a portion

1 or portions of the material on a page qualifies for protection, the PRODUCING PARTY also must
2 clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

3 (b) for TESTIMONY, that the DESIGNATING PARTY may either identify on
4 the record all protected TESTIMONY, or may invoke, on the record or by written notice to all
5 parties on or before the next business day, a right to have up to twenty-one (21) days from the
6 deposition, hearing or proceeding to make its designation. The designation shall indicate the page
7 and line numbers of any transcript of material deemed to be CONFIDENTIAL.

8 (c) for INFORMATION produced in some form other than documentary and for
9 any other tangible items, that the PRODUCING PARTY affix in a prominent place on the exterior
10 of the container or containers in which the INFORMATION or item is stored the legend
11 "CONFIDENTIAL." If only a portion or portions of the INFORMATION or item warrant
12 protection, the PRODUCING PARTY, to the extent practicable, shall identify the protected
13 portion(s).

14 (d) Parties shall give advance notice if they expect a deposition or other
15 proceeding to include PROTECTED MATERIAL so that the other PARTIES can ensure that only
16 authorized individuals are present at those proceedings when such material is disclosed or used. The
17 use of a DOCUMENT as an exhibit at a deposition shall not in any way affect its designation.
18 Transcripts containing PROTECTED MATERIAL shall have a legend on the title page noting the
19 presence of PROTECTED MATERIAL, and the title page shall be followed by a list of all pages
20 (including line numbers as appropriate) that have been designated, and the level of protection being
21 asserted. The DESIGNATING PARTY shall inform the court reporter of these requirements. Any
22 transcript that is prepared before the expiration of the twenty-one (21) day period for designation
23 shall be treated during that period as if it had been designated CONFIDENTIAL unless otherwise
24 agreed. After the expiration of the twenty-one (21) day period, the transcript shall be treated only
25 as actually designated.

26 5.2 Materials Subject to Designation. Each PARTY may designate any DOCUMENT,
27 thing, interrogatory answer, admission, deposition TESTIMONY, and portions of such materials,
28 or other INFORMATION which it has provided or which a NON-PARTY has provided as

1 “CONFIDENTIAL” in accordance with this PROTECTIVE ORDER. In designating
2 DOCUMENTS, TESTIMONY or INFORMATION as “CONFIDENTIAL,” the DESIGNATING
3 PARTY’s COUNSEL shall make a good faith determination, before applying the designation, that
4 the DOCUMENTS, TESTIMONY or INFORMATION warrants protection under Rule 26(c) of the
5 Federal Rules of Civil Procedure.

6 5.3 Inadvertent Failure to Designate. If timely corrected, an inadvertent failure to
7 designate qualified INFORMATION or items does not, standing alone, waive the DESIGNATING
8 PARTY’s right to secure protection under this PROTECTIVE ORDER for such material. If a
9 DESIGNATING PARTY inadvertently fails to designate material which, in good faith, might
10 otherwise be deemed CONFIDENTIAL, that DESIGNATING PARTY shall provide written notice
11 of such designation within a reasonable time of discovering the inadvertent failure to so designate
12 the material as CONFIDENTIAL. Any RECEIVING PARTY who objects to the late designation
13 must do so in writing within seven (7) days of the late designation. In the absence of such an
14 objection, the late designation shall be deemed timely and treated as if made within the time(s) set
15 forth above. Upon timely assertion or correction of a designation, all recipients must make
16 reasonable efforts to ensure that the materials are treated according to this PROTECTIVE ORDER.

17 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

18 6.1 Timing of Challenges. Any PARTY or NON-PARTY may challenge a designation
19 of confidentiality at any time. Unless an immediate challenge to a DESIGNATING PARTY’s
20 confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary
21 economic burdens, or a significant disruption or delay of the litigation, a PARTY does not waive its
22 right to challenge a confidentiality designation by electing not to mount a challenge promptly after
23 the original designation is DISCLOSED.

24 6.2 Meet and Confer. The CHALLENGING PARTY shall initiate the dispute resolution
25 process by providing written notice of each designation it is challenging and describing the basis for
26 each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice
27 must recite that the challenge to confidentiality is being made in accordance with this specific
28 paragraph of the PROTECTIVE ORDER. The PARTIES shall attempt to resolve each challenge in

1 good faith and must begin the process by conferring directly (in a verbal dialogue; other forms of
2 communication are not sufficient) within fourteen (14) days of the date of service of notice. In
3 conferring, the CHALLENGING PARTY must explain the basis for its belief that the confidentiality
4 designation was not proper and must give the DESIGNATING PARTY an opportunity to review
5 the designated material, to reconsider the circumstances, and, if no change in designation is offered,
6 to explain the basis for the chosen designation. A CHALLENGING PARTY may proceed to the
7 next stage of the challenge process only if it has engaged in this meet and confer process first or
8 establishes that the DESIGNATING PARTY is unwilling to participate in the meet and confer
9 process in a timely manner.

10 6.3 Joint Statement. If the PARTIES cannot resolve a challenge without court
11 intervention, the CHALLENGING PARTY shall submit a challenge to the COURT via joint
12 stipulation pursuant to Local Rule 251(c). The burden of persuasion in any such challenge
13 proceeding shall be on the DESIGNATING PARTY. Unless the DESIGNATING PARTY has
14 expressly waived the confidentiality designation, all PARTIES shall continue to afford the material
15 in question the level of protection to which it is entitled under the PRODUCING PARTY's
16 designation until the COURT rules on the challenge.

17 **VII. ACCESS TO AND USE OF PROTECTED MATERIAL**

18 7.1 Basic Principles. A RECEIVING PARTY may use PROTECTED MATERIAL that
19 is DISCLOSED or produced by another PARTY or by a NON-PARTY in connection with this case
20 only for prosecuting, defending, or attempting to settle this litigation. Such PROTECTED
21 MATERIAL may be DISCLOSED only to the categories of persons and under the conditions
22 described in this PROTECTIVE ORDER. When the litigation has been terminated, a RECEIVING
23 PARTY must comply with the provisions of section 12.4 below regarding final disposition.

24 PROTECTED MATERIAL must be stored and maintained by a RECEIVING PARTY at a
25 location and in a secure manner that ensures that access is limited to the persons authorized under
26 this PROTECTIVE ORDER.

27 7.2 **DISCLOSURE of PROTECTED MATERIAL.** Unless otherwise ordered by the
28 COURT or permitted in writing by the DESIGNATING PARTY, a RECEIVING PARTY may

1 DISCLOSE any INFORMATION or item designated "CONFIDENTIAL" only to:

2 (a) the RECEIVING PARTY's OUTSIDE COUNSEL OF RECORD, as well as
3 employees of said OUTSIDE COUNSEL OF RECORD to whom it is reasonably necessary to
4 DISCLOSE the INFORMATION for this ACTION;

5 (b) the officers, directors, and employees (including IN-HOUSE COUNSEL) of
6 the RECEIVING PARTY to whom DISCLOSURE is reasonably necessary for this ACTION or
7 who access the INFORMATION in the ordinary course of business;

8 (c) EXPERTS (as defined in this PROTECTIVE ORDER) of the RECEIVING
9 PARTY to whom DISCLOSURE is reasonably necessary for this litigation and who have signed
10 the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

11 (d) the COURT and its personnel;

12 (e) court reporters in this PROCEEDING, to whom DISCLOSURE is reasonably
13 necessary for this ACTION;

14 (f) professional jury or trial consultants, mock jurors, and PROFESSIONAL
15 VENDORS to whom DISCLOSURE is reasonably necessary for this litigation and who have signed
16 the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

17 (g) during their depositions, NON-PARTY witnesses in the ACTION to whom
18 DISCLOSURE is reasonably necessary and who have signed the "Acknowledgment and Agreement
19 to Be Bound" (Exhibit A), unless otherwise agreed by the DESIGNATING PARTY or ordered by
20 the COURT. Pages of transcribed deposition TESTIMONY or exhibits to depositions that reveal
21 PROTECTED MATERIAL must be separately bound by the court reporter and may not be
22 DISCLOSED to anyone except as permitted under this PROTECTIVE ORDER;

23 (h) the author or recipient of a document containing the information or a
24 custodian or other person who otherwise possessed or knew the information prior to its designation
25 as CONFIDENTIAL;

26 (i) a PARTY's auditors, regulators, or reinsurers in connection with that
27 PARTY's regular business practices.

28 **VIII. PROTECTED MATERIAL SUBPOENAED OR ORDERED**

1 **PRODUCED IN OTHER LITIGATION**

2 8.1 If a PARTY is served with a subpoena or a court order issued in other litigation that
3 compels DISCLOSURE of any PROTECTED MATERIAL, that PARTY must:

4 (a) promptly notify in writing the DESIGNATING PARTY. Such notification
5 shall include a copy of the subpoena or court order;

6 (b) promptly notify in writing the PARTY who caused the subpoena or order to
7 issue in the other litigation that some or all of the material covered by the subpoena or order is
8 subject to this PROTECTIVE ORDER. Such notification shall include a copy of this PROTECTIVE
9 ORDER; and

10 (c) cooperate with respect to all reasonable procedures sought to be pursued by
11 the DESIGNATING PARTY whose PROTECTED MATERIAL may be affected.

12 8.2 If the DESIGNATING PARTY timely seeks a protective order, the PARTY served
13 with the subpoena or court order shall not produce PROTECTED MATERIAL before a
14 determination by the COURT from which the subpoena or order issued, unless the PARTY has
15 obtained the DESIGNATING PARTY's permission. The DESIGNATING PARTY shall bear the
16 burden and expense of seeking protection in that court of its PROTECTED MATERIAL – and
17 nothing in these provisions should be construed as authorizing or encouraging a RECEIVING
18 PARTY in this ACTION to disobey a lawful directive from another court.

19 **IX. PROTECTED MATERIAL OF A NON-PARTY SOUGHT TO BE**
20 **PRODUCED IN THIS LITIGATION**

21 9.1 The terms of this PROTECTIVE ORDER are applicable to DOCUMENTS,
22 INFORMATION or TESTIMONY produced by a NON-PARTY and designated as
23 “CONFIDENTIAL.” Such DOCUMENTS, INFORMATION or TESTIMONY are protected by the
24 remedies and relief provided by this PROTECTIVE ORDER. Nothing in these provisions should
25 be construed as prohibiting a NON-PARTY from seeking additional protections.

26 9.2 If a PARTY is required, by a valid discovery request, to produce a NON-PARTY's
27 CONFIDENTIAL DOCUMENTS, INFORMATION or TESTIMONY in its possession, the
28 PARTY shall:

1 (a) promptly notify in writing the REQUESTING PARTY and the NON-
2 PARTY that some or all of the DOCUMENTS, INFORMATION or TESTIMONY requested are
3 subject to a confidentiality agreement with a NON-PARTY;

4 (b) promptly provide the NON-PARTY with a copy of the PROTECTIVE
5 ORDER in this ACTION, the relevant discovery request(s), and a reasonably specific description
6 of the DOCUMENTS, INFORMATION or TESTIMONY requested; and

7 (c) make the DOCUMENTS, INFORMATION or TESTIMONY requested
8 available for inspection by the NON-PARTY.

9 9.3 If the NON-PARTY fails to object or seek a protective order from this COURT
10 within fourteen (14) days of receiving the notice and accompanying DOCUMENTS,
11 INFORMATION or TESTIMONY, the RECEIVING PARTY may produce the NON-PARTY's
12 CONFIDENTIAL DOCUMENTS, INFORMATION or TESTIMONY responsive to the discovery
13 request. If the NON-PARTY timely seeks a protective order, the RECEIVING PARTY shall not
14 produce any information in its possession or control that is subject to the confidentiality agreement
15 with the NON-PARTY before a determination by the COURT. Absent a court order to the contrary,
16 the NON-PARTY shall bear the burden and expense of seeking protection in this COURT of its
17 PROTECTED MATERIAL.

18 **X. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

19 If a RECEIVING PARTY learns that, by inadvertence or otherwise, it has DISCLOSED
20 PROTECTED MATERIAL to any person or in any circumstance not authorized under this
21 PROTECTIVE ORDER, the RECEIVING PARTY must immediately (a) notify in writing the
22 PRODUCING PARTY and the DESIGNATING PARTY (if not the same party) of the unauthorized
23 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the PROTECTED
24 MATERIAL, (c) inform the person or persons to whom unauthorized DISCLOSURES were made
25 of all the terms of this PROTECTIVE ORDER, and (d) request such person or persons to execute
26 the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

27 **XI. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**

1 **PROTECTED MATERIAL**

2 When a PRODUCING PARTY gives notice to RECEIVING PARTIES that certain
3 inadvertently produced material is subject to a claim of privilege or other protection, the obligations
4 of the RECEIVING PARTIES are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
5 This provision is not intended to modify whatever procedure may be established in an e-discovery
6 order that provides for production without prior privilege review. Pursuant to Federal Rule of
7 Evidence 502(d) and (e), insofar as the PARTIES reach an agreement on the effect of
8 DISCLOSURE of a communication or information covered by the attorney-client privilege or work
9 product protection, the PARTIES may incorporate their agreement in the stipulated protective order
10 submitted to the COURT.

11 **XII. MISCELLANEOUS**

12 12.1 Right to Further Relief. Nothing in this PROTECTIVE ORDER abridges the right of
13 any person to seek its modification by the COURT in the future.

14 12.2 Right to Assert Other Objections. By stipulating to the entry of this PROTECTIVE
15 ORDER no PARTY waives any right it otherwise would have to object to disclosing or producing
16 any information or item on any ground not addressed in this PROTECTIVE ORDER, and the parties
17 expressly reserve the right to assert objections to the production of documents and/or
18 communications on the grounds that they are subject to the attorney-client privilege, work product
19 doctrine, or any other applicable privilege or protection. Similarly, no PARTY waives any right to
20 object on any ground to use in evidence of any of the material covered by this PROTECTIVE
21 ORDER.

22 12.3 Filing PROTECTED MATERIAL. Without written permission from the
23 DESIGNATING PARTY or a court order secured after appropriate notice to all interested persons,
24 a PARTY may not file in the public record in this ACTION any PROTECTED MATERIAL. A
25 PARTY that seeks to file under seal any PROTECTED MATERIAL must follow the procedure set
26 forth in Local Rule 141. PROTECTED MATERIAL may only be filed under seal pursuant to a
27 court order authorizing the sealing of the specific PROTECTED MATERIAL at issue. The fact that
28 a document has been designated under this PROTECTIVE ORDER is insufficient to justify filing

1 under seal. Instead, PARTIES must explain the basis for confidentiality of each document sought
 2 to be filed under seal. Because a PARTY other than the DESIGNATING PARTY will often be
 3 seeking to file PROTECTED MATERIAL, cooperation among the PARTIES in preparing, and in
 4 reducing the number and extent of, requests for under seal filing is essential. If a RECEIVING
 5 PARTY's request to file PROTECTED MATERIAL under seal pursuant to Local Rule 141 is
 6 denied by the COURT, then the RECEIVING PARTY may file the material in the public record
 7 unless (1) the DESIGNATING PARTY seeks reconsideration within four (4) days of the denial, or
 8 (2) as otherwise instructed by the COURT. Notwithstanding the above, the filing PARTY shall, in
 9 good faith, refrain from drawing public attention to the COURT filing of information formerly
 10 designated as CONFIDENTIAL so long as the original designation was made in good faith.

11 12.4 Storage of Protected Information by RECEIVING PARTY. The recipient of any
 12 PROTECTED MATERIAL provided under this PROTECTIVE ORDER (including copies or
 13 excerpts made thereof) shall maintain such information in a secure and safe area, and shall exercise
 14 reasonable and proper care with respect to the storage, custody, use, and/or dissemination of such
 15 information.

16 12.5 Final Disposition. Within sixty (60) days after the final disposition of this ACTION,
 17 each RECEIVING PARTY must return all PROTECTED MATERIAL to the PRODUCING
 18 PARTY or make a good faith effort to destroy such material. As used in this subdivision, "all
 19 PROTECTED MATERIAL" includes all copies, abstracts, compilations, summaries, and any other
 20 format reproducing or capturing any of the PROTECTED MATERIAL. Whether the PROTECTED
 21 MATERIAL is returned or destroyed, the RECEIVING PARTY must submit a written certification
 22 to the PRODUCING PARTY (and, if not the same person or entity, to the DESIGNATING PARTY)
 23 by the sixty (60) day deadline that (1) identifies (by category, where appropriate) all the
 24 PROTECTED MATERIAL that was returned or destroyed and (2) affirms that the RECEIVING
 25 PARTY has not intentionally retained any copies, abstracts, compilations, summaries or any other
 26 format reproducing or capturing any of the PROTECTED MATERIAL. Notwithstanding the
 27 foregoing portion of this Section, (1) COUNSEL are entitled to retain an archival copy of all
 28 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,

1 correspondence, email, deposition and trial exhibits, EXPERT reports, attorney work product, and
2 consultant and EXPERT work product, even if such materials contain PROTECTED MATERIAL;
3 and (2) the undersigned PARTIES may retain any PROTECTED MATERIAL to the extent
4 necessary pursuant to legal requirements, professional duties or bona fide document retention
5 policies, provided however that the PARTIES shall continue to be bound by the terms of this
6 PROTECTIVE ORDER for such time period as they retain such PROTECTED MATERIAL. Any
7 such archival copies or retained DOCUMENTS that contain or constitute PROTECTED
8 MATERIAL remain subject to this PROTECTIVE ORDER as set forth in Section 4.2 regarding
9 duration.

10 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

11

12 Dated: May 26, 2023

McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

13

14

15 By: /s/ Nicholas H. Rasmussen

16 Nicholas H. Rasmussen

17 Graham A. Van Leuven

Daniella M Crisanti

18 Attorneys for NATIONAL INTERSTATE
INSURANCE COMPANY

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28

Dated: May 26, 2023

HINSHAW & CULBERTSON LLP

By: /s/ Robert G. Levy

Robert G. Levy

Robert J. Romero

Peter J. Felsenfeld

Attorneys for ACCEPTANCE CASUALTY
INSURANCE COMPANY

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ORDER

The court has reviewed the parties' stipulated protective order. (See ECF No. 20.) The stipulation comports with the relevant authorities and the court's applicable local rule. See L.R. 141.1. The court APPROVES the protective order, subject to the following clarification. Once an action is closed, "the court will not retain jurisdiction over enforcement of the terms of any protective order filed in that action." L.R. 141.1(f); see also, e.g., MD Helicopters, Inc. v. Aerometals, Inc., 2017 WL 495778 (E.D. Cal., Feb. 03, 2017) (noting that courts in the district generally do not retain jurisdiction for disputes concerning protective orders after closure of the case). Thus, the court will not retain jurisdiction over this protective order once the case is closed.

Dated: May 31, 2023

Kendall J. Newman
KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

nati.2127

EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____ [type or print full name] of _____ [print or type full address], hereby declare under penalty of perjury that I have read and am fully familiar with the terms of the Protective Order entered in *National Interstate Insurance Company v. Acceptance Casualty Insurance Company*, Case No. 2:22-CV-02127-KJN venued in the United States District Court for the Eastern District of California, and hereby agree to comply with and be bound by the terms and conditions of said Order unless and until modified by further Order of the Court.

I acknowledge that I am about to receive Confidential Documents and/or information in said action, and hereby certify my understanding that such information is being provided to me pursuant to the terms and restrictions of the Protective Order. I understand that such information, and any copies I make of any material containing “Confidential” information, or any notes or other records that may be made regarding any such information, shall not be disclosed to others, except other persons that are identified in or have agreed to comply with and be bound by the terms of the Protective Order. I hereby consent to the jurisdiction of said Court for purposes of enforcing this Order, even if such enforcement proceedings occur after termination of this action.

18 I hereby appoint _____ [print or type full name] of
19 _____
20 _____
21 [print or type full address, telephone number, and email address] as my California agent for service
22 of process in connection with this action or any proceedings related to enforcement of this Stipulated
23 Protective Order

24 || Date:

25 City and State where sworn and signed:

26 Printed Name:

27 || Signature:

PROOF OF SERVICE

**National Interstate Insurance Company v. Acceptance Casualty Insurance
Case No. 22-cv-02127-KJN**

STATE OF CALIFORNIA, COUNTY OF FRESNO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Fresno, State of California. My business address is 7647 North Fresno Street, Fresno, CA 93720.

On May 26, 2023, I served true copies of the following document(s) described as **[PROPOSED] STIPULATED PROTECTIVE ORDER** on the interested parties in this action as follows:

Robert G. Levy
Peter J. Felsenfeld
Robert J. Romero
Jess West
Hinshaw & Culbertson LLP
50 California Street
Suite 2900
San Francisco, CA 94111
rlevy@hinshawlaw.com
pfelsenfeld@mail.hinshawlaw.com
rromero@hinshawlaw.com
jwest@hinshawlaw.com

Attorneys for *Acceptance Causality Insurance Company*

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 26, 2023, at Fresno, California.

/s/ Heather Ward